

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

CRAIG DAVIS, as parent and
natural guardian of ANDREW
DAVIS,

Plaintiff,

v.

CATAMOUNT DEVELOPMENT
CORP., CATAMOUNT DEVELOPMENT
CORP. d/b/a CATAMOUNT SKI AREA,
Defendants.

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) CIVIL ACTION
) NO. 05-30011-MAP
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DEFENDANT'S MOTION TO STRIKE AFFIDAVIT OF CRAIG DAVIS

The defendant thereby moves to strike paragraph 5 of the affidavit of Craig Davis. Fed.R.Civ.P. 56(e) states, in part, that "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."

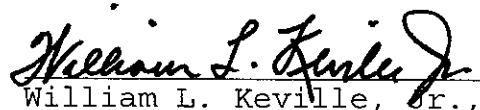
The affidavit of Craig Davis states, in part, that:

5. Andrew told me that he had hit a 2" x 4" wooden post that I could see on the trail, leaning over at about a 45 degree angle. It appeared that the top of his right ski had gone under the post, trapping his leg as he skied past.

The statement of what Andrew told Craig Davis is inadmissible hearsay and should be struck. The rest of the paragraph should be struck because it is not based on personal knowledge. There

is no evidence that Craig Davis witnessed the accident; he, therefore, has no personal knowledge as to how it occurred. In fact, at his deposition, he testified that he only knew what he heard about it. See Deposition of Craig Davis, p. 79 (attached). Craig Davis, therefore, can only speculate as to how the accident occurred and this motion to strike should be granted.

By their attorneys,


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Dated: October 20, 2006

UNITED STATES DISTRICT COURT
for the
District of Massachusetts

CRAIG DAVIS, as parent and)
natural guardian of)
ANDREW DAVIS,)
Plaintiff)

v.)

No. 05-30011-MAP

CATAMOUNT DEVELOPMENT CORP.,)
CATAMOUNT DEVELOPMENT CORP.,)
d/b/a CATAMOUNT SKI AREA,)
Defendants)

DEPOSITION OF: CRAIG DAVIS, taken before
Sharon R. Roy, Notary Public Stenographer, pursuant
to Rule 30 of the Massachusetts Rules of Civil
Procedure, at the law offices of CHARLES J. FERRIS,
500 Main Street, Great Barrington, Massachusetts on
January 9, 2006, commencing at 10:06 a.m.

A P P E A R A N C E S:

(See Page 2)

Sharon R. Roy
Certified Shorthand Reporter
Registered Professional Reporter

1 moderately. Because it's very difficult to ski fast
2 on level terrain.

3 You'd have to ask her. It was clear to me
4 that he was not skiing fast.

5 Q. Did you ever caution your ski group that
6 you were instructing not to ski fast when crossing
7 over onto a trail from another trail?

8 A. I think repeatedly I've said that today,
9 mm-hmm.

10 Q. And you would not advise one to ski at a
11 fast rate of speed between the Catamount and the On
12 Stage trail, would you?

13 A. Absolutely not, right.

14 Q. And do you know whether Andrew lost control
15 prior to him coming into contact with the fence post?

16 A. I do not know. I only know what I've
17 heard.

18 Q. Did you stay with Andrew throughout his
19 medical treatment that day?

20 A. Yes, I did.

21 Q. And did you stay with him when he was with
22 the ski patrol?

23 A. Yes, I did.

24 Q. And were you with him when he was with the